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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,634	04/29/2005	Bruce Ivins	4239-67021-06	5041
36218 7590 08/05/2009 KLARQUIST SPARKMAN, LLP 121 S.W. SALMON STREET SUITE #1600 PORTLAND, OR 97204-2988			EXAMINER LE, EMILY M	
			ART UNIT	PAPER NUMBER
			1648	
			MAIL DATE	DELIVERY MODE
			08/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,634

Applicant(s)

IVINS ET AL.

Examiner

EMILY M. LE

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-15, 18, 19, 37, 38, 40, 41, 50, 52-57 and 61-66 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 6-15, 18, 19 and 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37, 38, 40, 41, 50, 52-57 and 61-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/26/2009 has been entered.

Status of Claims

2. Claims 65-66 are added. Claims 5, 16-17, 20-36, 39, 42-49, 51 and 58-60 are cancelled. Claims 1-4, 6-15, 18-19, 37-38, 40-41, 50, 52-57 and 61-66 are pending. Claims 1-4, 6-15, 18-19 and 50 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/09/2007. Claims 37-38, 40-41, 52-57 and 61-66 are under examination.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 37-38, 40-41, 52-57 and 61-66 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the method recited in the

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claims, wherein the oligodeoxynucleotide consists of the nucleic acid sequence set forth as SEQ ID NO: 200, does not reasonably provide enablement for the method recited in the claims, wherein the oligodeoxynucleotide comprises of the nucleic acid sequence set forth as SEQ ID NO: 200.

The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. This is a scope of enablement rejection. It is noted that Applicant has demonstrated unexpected results for the use of SEQ ID NO: 200 with a *Bacillus anthracis* antigen. However, the claimed unexpected results do not commensurate with the claimed invention. Currently, the claims recite the use of oligonucleotides that comprises SEQ ID NO: 200, not just oligonucleotides that consist of SEQ ID NO: 200. As noted by Applicant, and widely recognized in the art, the bases flanking the CpG motif confer part of the activity of to the CpG oligonucleotide. Thus, in the absence of evidence demonstrating that the noted unexpected results are extended to oligonucleotides that comprise SEQ ID NO: 200, the instant scope of enablement rejection is appropriate. In the instant case, Applicant has failed to demonstrate that the use of oligonucleotides that comprises SEQ ID NO: 200 would also yield the demonstrated unexpected results.

Conclusion

5. No claims are allowed. To expedite the allowance of this case, after all rejections on the record are properly addressed, Applicant's response should include instructions to cancel withdrawn claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMILY M. LE whose telephone number is (571)272-0903. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/EMILY M LE/
Primary Examiner, Art Unit 1648

/E. M. L./
Primary Examiner, Art Unit 1648